

	\$1,300
Taxable income	5,700

In 1960 the taxpayer undertakes the operation of a trade or business and sustains therein a net operating loss of \$4,700. In 1961 he sustains a net operating loss of \$10,000 in the operation of the business. Under section 172(b)(2), it is determined that the entire amount of each loss, \$4,700 and \$10,000, is a carryback to 1959. In determining the amount of the carryover of the 1961 loss to 1962, the taxable income for 1959 as computed under this paragraph is \$3,870, determined as follows:

Salary	\$5,000
Net long-term capital gain	4,000
Total gross income	9,000
Less: Deduction for carryback of 1960 net operating loss	4,700
Adjusted gross income	4,300
Less: Standard deduction	430
Taxable income	3,870

(iii) *Minimum limitation.* The taxable income, as modified under this paragraph, shall in no case be considered less than zero.

(3) *Electing small business corporations.* For special rule applicable to corporations which were electing small business corporations under Subchapter S (section 1361 and following), Chapter 1 of the Code, during one or more of the taxable years described in section 172(b)(1), see paragraph (f) of § 1.172-1.

(4) *Qualified real estate investment trust.* Where a net operating loss is carried over to a qualified taxable year (as defined in § 1.172-10(b)) ending after October 4, 1976, the real estate investment trust taxable income (as defined in section 857(b)(2)) shall be used as the "taxable income" for that taxable year to determine, under section 172(b)(2), the balance of the net operating loss available as a carryover to a subsequent taxable year. The real estate investment trust taxable income, however, is computed by applying the rules applicable to corporations in paragraph (a)(2) of this section. Thus, in computing real estate investment trust taxable income for purposes of section 172(b)(2), the net operating loss deduction for the taxable year shall be computed in accordance with paragraph (a)(2)(i) of this section. The principles of this subparagraph may be illustrated by the following examples:

Example 1. Corporation X, a calendar year taxpayer, is formed on January 1, 1977. X incurs a net operating loss of \$100,000 for its taxable year 1977, which under section 172(b)(2), is a carryover to 1978. For 1978 X is a qualified real estate investment trust (as defined in § 1.172-10(b)) and has real estate investment trust taxable income (determined without regard to the deduction for dividends paid or the net operating loss deduction) of \$150,000, all of which consists of ordinary income. X pays dividends in 1978 totaling \$120,000 that qualify for the deduction for dividends paid under section 857(b)(2)(B). The portion of the 1977 net operating loss available as a carryover to 1979 and subsequent years is \$70,000 (i.e., the excess of the amount of the net operating loss (\$100,000) over the amount of the real estate investment trust taxable income for 1978 (\$30,000), determined by taking into account the deduction for dividends paid allowable under section 857(b)(2)(B) and without taking into account the net operating loss of 1977).

Example 2. (i) Assume the same facts as in *Example 1*, except that the \$150,000 of real estate investment trust taxable income (determined without the net operating loss deduction or the dividends paid deduction) consists of \$80,000 of ordinary income and \$70,000 of net capital gain. The amount of capital gain dividends which may be paid for 1978 is limited to \$50,000, that is, the amount of the real estate investment trust taxable income for 1978, determined by taking into account the net operating loss deduction for the taxable year, but not the deduction for dividends paid (\$150,000 minus \$100,000). See § 1.857-6(e)(1)(ii).

(ii) X designated \$50,000 of the \$120,000 of dividends paid as capital gains dividends (as defined in section 857(b)(3)(C) and § 1.857-6(e)). Thus, \$70,000 is an ordinary dividend. Since both ordinary dividends and capital gains dividends are taken into account in computing the deduction for dividends paid under section 857(b)(2)(B), the result will be the same as in *Example 1*; that is, the portion of the 1977 net operating loss available as a carryover to 1979 and subsequent years is \$70,000.

(b) [Reserved]

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6862, 30 FR 14428, Nov. 18, 1965; T.D. 6900, 31 FR 14641, Nov. 17, 1966; T.D. 7767, 46 FR 11263, Feb. 6, 1981; T.D. 8107, 51 FR 43346, Dec. 2, 1986]

§ 1.172-6 Illustration of net operating loss carrybacks and carryovers.

The application of § 1.172-4 may be illustrated by the following example:

(a) *Facts.* The books of the taxpayer, whose return is made on the basis of

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the calendar year, reveal the following facts:

<i>Taxable year</i>	<i>Taxable income</i>	<i>Net operating loss</i>
1954	\$15,000	
1955	30,000	
1956		(\$75,000)
1957	20,000	
1958		(150,000)
1959	30,000	
1960	35,000	
1961	75,000	
1962	17,000	
1963	53,000	

The taxable income thus shown is computed without any net operating loss deduction. The assumption is also made that none of the other modifications prescribed in § 1.172-5 apply. There are no net operating losses for 1950, 1951, 1952, 1953, 1964, 1965, or 1966.

(b) *Loss sustained in 1956.* The portions of the \$75,000 net operating loss for 1956 which shall be used as carrybacks to 1954 and 1955 and as carryovers to 1957, 1958, 1959, 1960, and 1961 are computed as follows:

(1) *Carryback to 1954.* The carryback to this year is \$75,000, that is, the amount of the net operating loss.

(2) *Carryback to 1955.* The carryback to this year is \$60,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	15,000
Carryback	60,000

(3) *Carryover to 1957.* The carryover to this year is \$30,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
	45,000
Carryover	30,000

(4) *Carryover to 1958.* The carryover to this year is \$10,000, computed as follows:

Net operating loss	\$75,000
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Less:

Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000
	65,000
Carryover	10,000

(5) *Carryover to 1959.* The carryover to this year is \$10,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000
Taxable income for 1958 (a year in which a net operating loss was sustained)	0
	65,000
Carryover	10,000

(6) *Carryover to 1960.* The carryover to this year is \$0, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000
Taxable income for 1958 (a year in which a net operating loss was sustained)	0
Taxable income for 1959 (computed without the deduction of the carryover from 1956 or the carryover from 1958)	30,000
	95,000
Carryover	0

(7) *Carryover to 1961.* The carryover to this year is \$0, computed as follows:

Net operating loss	\$75,000
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Less:

Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000	
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000	
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000	
Taxable income for 1958 (a year in which a net operating loss was sustained)	0	
Taxable income for 1959 (computed without the deduction of the carryover from 1956 or the carryover from 1958)	30,000	
Taxable income for 1960 (computed without the deduction of the carryover from 1956 or the carryover from 1958)	35,000	
	<u>130,000</u>	
Carryover		0

(c) *Loss sustained in 1958.* The portions of the \$150,000 net operating loss for 1958 which shall be used as carrybacks to 1955, 1956, and 1957 and as carryovers to 1959, 1960, 1961, 1962, and 1963 are computed as follows:

(1) *Carryback to 1955.* The carryback to this year is \$150,000, that is, the amount of the net operating loss.

(2) *Carryback to 1956.* The carryback to this year is \$150,000, computed as follows:

Net operating loss	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account)	0
Carryback	150,000

(3) *Carryback to 1957.* The carryback to this year is \$150,000, computed as follows:

Net operating loss	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0
Taxable income for 1956 (a year in which a net operating loss was sustained)	0
	<u>0</u>
Carryback	150,000

(4) *Carryover to 1959.* The carryover to this year is \$150,000, computed as follows:

Net operating loss	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0
Taxable income for 1956 (a year in which a net operating loss was sustained)	0
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account)	0
	<u>0</u>
Carryover	150,000

(5) *Carryover to 1960.* The carryover to this year is \$130,000, computed as follows:

Net operating loss	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0
Taxable income for 1956 (a year in which a net operating loss was sustained)	0
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account)	0
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account)	\$20,000
	<u>20,000</u>
Carryover	130,000

(6) *Carryover to 1961.* The carryover to this year is \$95,000, computed as follows:

Net operating loss	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0

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Taxable income for 1956 (a year in which a net operating loss was sustained)	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account)	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account)	\$20,000	
Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account)	35,000	
		55,000
Carryover		95,000

(7) *Carryover to 1962.* The carryover to this year is \$20,000, computed as follows:

Net operating loss	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0	
Taxable income for 1956 (a year in which a net operating loss was sustained)	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account)	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account)	\$20,000	
Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account)	35,000	

Taxable income for 1961 (the \$75,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1961 not being taken into account)	75,000	130,000
Carryover		20,000

(8) *Carryover to 1963.* The carryover to this year is \$3,000, computed as follows:

Net operating loss	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account) ..	0	
Taxable income for 1956 (a year in which a net operating loss was sustained)	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account)	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account)	\$20,000	
Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account)	35,000	
Taxable income for 1961 (the \$75,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1961 not being taken into account)	75,000	
Taxable income for 1962 (computed without the deduction of the carryover from 1958)	17,000	147,000
Carryover		3,000

(d) *Determination of net operating loss deduction for each year.* The carryovers and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the net operating loss deduction in the following manner:

Taxable year	Carryover		Carryback		Net operating loss deduction
	From 1956	From 1958	From 1956	From 1958	
1954	\$0	\$0	\$75,000	\$0	\$75,000
1955	0	0	60,000	150,000	210,000
1957	30,000	0	0	150,000	180,000
1959	10,000	150,000	0	0	160,000
1960	0	130,000	0	0	130,000
1961	0	95,000	0	0	95,000
1962	0	20,000	0	0	20,000
1963	0	3,000	0	0	3,000

§1.172-7 Joint return by husband and wife.

(a) *In general.* This section prescribes additional rules for computing the net operating loss carrybacks and carryovers of a husband and wife making a joint return for one or more of the taxable years involved in the computation of the net operating loss deduction.

(b) *From separate to joint return.* If a husband and wife, making a joint return for any taxable year, did not make a joint return for any of the taxable years involved in the computation of a net operating loss carryover or a net operating loss carryback to the taxable year for which the joint return is made, such separate net operating loss carryover or separate net operating loss carryback is a joint net operating loss carryover or joint net operating loss carryback to such taxable year.

(c) *Continuous use of joint return.* If a husband and wife making a joint return for a taxable year made a joint return for each of the taxable years involved in the computation of a net operating loss carryover or net operating loss carryback to such taxable year, the joint net operating loss carryover or joint net operating loss carryback to such taxable year is computed in the same manner as the net operating loss carryover or net operating loss carryback of an individual under §1.172-4 but upon the basis of the joint net operating losses and the combined taxable income of both spouses.

(d) *From joint to separate return.* If a husband and wife making separate returns for a taxable year made a joint return for any, or all, of the taxable years involved in the computation of a net operating loss carryover or net op-

erating loss carryback to such taxable year, the separate net operating loss carryover or separate net operating loss carryback of each spouse to the taxable year is computed in the manner set forth in §1.172-4 but with the following modifications:

(1) *Net operating loss.* The net operating loss of each spouse for a taxable year for which a joint return was made shall be deemed to be that portion of the joint net operating loss (computed in accordance with paragraph (d) of §1.172-3) which is attributable to the gross income and deductions of such spouse, gross income and deductions being taken into account to the same extent that they are taken into account in computing the joint net operating loss.

(2) *Taxable income to be subtracted—*(i) *Net operating loss of other spouse.* The taxable income of a particular spouse for any taxable year which is subtracted from the net operating loss of such spouse for another taxable year in order to determine the amount of such loss which may be carried back or carried over to still another taxable year is deemed to be, in a case in which such taxable income was reported in a joint return, the sum of the following:

(a) That portion of the combined taxable income of both spouses for such year for which the joint return was made which is attributable to the gross income and deductions of the particular spouse, gross income and deductions being taken into account to the same extent that they are taken into account in computing such combined taxable income, and

(b) That portion of such combined taxable income which is attributable to the other spouse; but, if such other spouse sustained a net operating loss in a taxable year beginning on the same